THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 3601 of 2007

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed against the order dated 16.6.2006 passed by the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 523 of 2005.

The respondent herein filed O.A. 523 of 2005 before the Tribunal contending that he had not been considered for promotion to IFS though he was eligible for the said promotion under Regulation 5 of IFS (Appointment by Promotion) Regulation 1966 against the vacancies of the year 2003. Having considered the matter, the Tribunal held that the selection committee erred in applying the condition stipulated in the first proviso to sub-rule 4 of Rule 5 to the respondent – applicant for including the applicant 'provisionally' in the selection list of the year 2003 because no disciplinary proceedings were pending against him as on 1st January of that year. The Tribunal, therefore, directed the respondents to confirm his inclusion as unconditional and to appoint the applicant to the Indian Forest Service under the IFS (appointment by promotion) Regulations, 1966 for the year 2003 with consequential benefits as eligible under the Rules. Aggrieved, the petitioners filed this writ petition.

Heard the learned counsel for the parties and perused the material available on record.

It is contended by the learned Government Pleader for Services-II, appearing for the petitioners, that as disciplinary

proceedings have been initiated against the respondent in the year 2004, his case was not considered and hence the Tribunal without taking into consideration the said fact has erroneously held that the selection committee erred in applying the condition stipulated in the first proviso to sub-rule 4 of Rule 5 to the applicant for including the applicant 'provisionally' in the select list of the year 2003.

On the other hand, it is contended by the learned counsel for the respondent that the petitioners did not conduct the selection committee meeting for the year 2003 as fixed by the UPSC and even by the end of 2003 no disciplinary proceedings were pending against the respondent and the charge sheet was issued against the respondent in the year 2004 and hence non-inclusion of the name of the respondent in the select list for the year 2003 as unconditional even though there were no disciplinary proceedings pending against him at that time is illegal and arbitrary.

We see some force in the contention raised by the learned counsel for the respondent. No material is placed before this Court or before the Tribunal showing that any disciplinary proceedings were pending against the respondent or anything adverse was noticed against him which would disentitle his name to be included in the select list for the year 2003. As on 1.1.2003, which is the crucial date of eligibility for the select list of 2003, the respondent – applicant was free from any disciplinary proceedings. Having perused the order passed by the Tribunal, we are convinced that having regard to the facts and circumstances the Tribunal rightly held that the name of the respondent should be included as unconditional.

Accordingly, while upholding the judgment of the Tribunal with regard to the inclusion of the respondent's name in the select list as unconditional, we modify the order passed by the

Tribunal to appoint the respondent – applicant to the Indian Forest Service to the effect that the petitioners should consider to appoint the respondent – applicant to the Indian Forest Service under the IFS (appointment by promotion) Regulations 1966 for the year 2003 with consequential benefits as eligible under the Rules within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 13-07-2007.

MVB.